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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 ERIC WILTON BURTON,

11 Petitioner,

12 v.

13 DIRECTOR OF CALIFORNIA
14 DEPARTMENT OF CORRECTIONS AND
REHABILITATION,

15 Respondent.

Civil No. 08cv0325-LAB (POR)

**ORDER DENYING MOTION FOR
APPOINTMENT OF COUNSEL**

[Doc. Nos. 3 and 7]

16 On February 19, 2008, this case was transferred from the Eastern District of California to the
17 Southern District of California. Petitioner, a state prisoner proceeding *pro se*, filed a Petition for
18 Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, together with a request to proceed in forma
19 pauperis and a motion for appointment of counsel. Petitioner filed a second motion for appointment
20 of counsel on May 2, 2008.

21 On April 18, 2008 the Honorable Larry Alan Burns granted Petitioner's application to
22 proceed in forma pauperis. However, in the same order, Judge Burns dismissed the petition without
23 prejudice for failure to use the proper form and failure to allege exhaustion of state court remedies.
24 According to the court's order, Petitioner must file a First Amended Petition no later than June 16,
25 2008 in order to reopen this case. To date, he has not filed a First Amended Petition and the case
26 remains closed. Based thereon, Petitioner's motion for appointment of counsel is DENIED AS
27 MOOT, WITHOUT PREJUDICE to Petitioner filing a third motion for appointment of counsel at a
28 later time, when and if the case is reopened.

1 The Court's review of the docket shows Petitioner has either filed or wishes to file an appeal
2 of Judge Burns' April 18th ruling. If Petitioner seeks appointment of legal representation for his
3 appeal, Petitioner should bring his motion for appointment of counsel before the United States Court
4 of Appeals for the Ninth Circuit.

5 **IT IS SO ORDERED.**

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7 DATED: May 13, 2008

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9 LOUISA S PORTER
10 United States Magistrate Judge

11 cc: The Honorable Larry Alan Burns
12 all parties
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